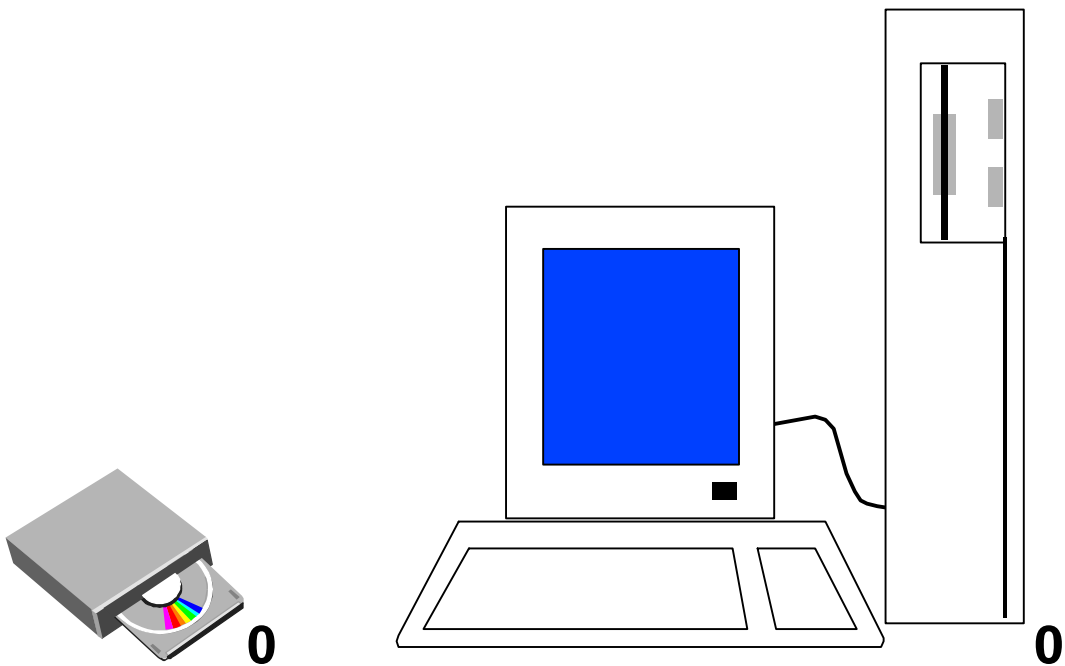


# **REUSE OR DISPOSITION OF PERSONAL COMPUTER (PC) SOFTWARE**



**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

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# **1. INTRODUCTION**

## **1.1 Purpose**

This guidance is intended to help managers, security officials, technical computer staff, logistics staff, and users fulfill their responsibilities for the proper reuse and disposition of excess HHS personal computer (PC) software and related material.

## **1.2 Background**

As a result of recommendations made by an OPDIV work group under the Continuous Improvement Program, a need exists to publish guidance to address the problem of properly reusing or disposing of the growing inventory of excess PC software. As a result of the need to take maximum advantage of the latest technological advances, PC software is being acquired and/or replaced at an increasing frequency. Thus, HHS is being confronted with the problem of properly disposing of growing stockpiles of excess PC software. Since licenses and purchasing agreements are not uniform, HHS guidance is needed to assure the legal and efficient redistribution, and disposition of HHS acquired software.

## **1.3 Scope**

This guidance applies to all HHS OPDIVs and STAFFDIVs. It provides reference to a number of resources concerning the identification, reuse, and/or disposal of assets. Note that reuse of assets supersedes any other disposal action. The guide also highlights the legal concerns with respect to the reuse and disposition of PC commercial software and focuses on the need to ensure that sensitive data are removed from PC software and equipment prior to redistribution or disposition.

## **1.4 Policy**

HHS policy regarding software management is specifically contained in IRM computer security guidance and, for the most part, focuses on the issue of virus protection. When reusing or disposing of PC software, HHS organizations must comply with all regulatory and HHS logistics policies and procedures too, as summarized in this guidance.

## **2. DISPOSITION/REUSE PROCEDURES**

This section applies the personal property provisions of the HHS "Logistics Management Manual" to the reassignment, utilization, and disposal of software; and is provided to assist individuals who directly or indirectly are responsible for carrying out personal property functions.

### **2.1 Reuse/Disposition Procedures**

There are three basic functions involved in the disposition/reuse of PC software and related material:

- o Identify excess PC software,
- o Screen PC software for reuse, and
- o Dispose of excess PC software.

### **2.2 Identify Excess PC Software**

The first step in the disposition process is to identify excess software. Normally, an identifying label is attached to HHS property (i.e., a decal with identification number and bar code). When software lacks an identifying property label, it is the responsibility of the appropriate IRM office or using organization to identify the excess software. The purchase order or contract can be helpful in this regard. For software, the purchasing agreement may be the only way to determine the applicable software licensing provisions. Also when using a software application, the software licensing agreement can usually be viewed on the PC by the user to determine if there are any limitations for reuse.

## **2.3 Screen PC Software for Reuse within HHS**

When excess software is identified, OPDIV staff (e.g., the Property Custodial Officer) prepares an HHS Form 22, "Request for Property Action," a similar authorized property turn-in document (TID), or by an electronic transaction through the Consolidated Unrequired Property Information Disposal System (CUPIDS).

The appropriate IRM office, in coordination with the Personal Property Management Office (PPMO), will conduct the necessary screening for possible reuse within HHS.

## **2.4 Dispose of Excess Software**

If the screening process indicates that there is no need for the PC software within HHS, the PPMO declares the items to be excess to HHS needs. The excess software may be:

- a. Transferred to another agency (when the holding agency learns of a potential user outside of the screening process),
- b. Exchanged or sold, as part of the transaction to acquire replacement,
- c. Donated or sold, not as part of the transaction to acquire replacement,
- d. Returned to the licensor (software only), or
- e. Abandoned or destroyed, after a duly authorized agency official determines in writing that abandonment or destruction is the most cost-effective disposal approach.

**Note: For software, reuse must be consistent with the limitations on any applicable licenses.**

## **2.5 Software Licenses**

It is important to specifically highlight the proper reuse and disposition of PC software because most commercial software is protected by copyrights, and some may also be patented, which provides additional protection to the vendor. When an organization "purchases" a commercial software package, it usually buys only the right (i.e.,

license) to use the software. The ownership of the "intellectual property," the underlying program code, remains with the inventor or manufacturer.<sup>1</sup>

Most commercial software comes with a standard license agreement. When purchasing commercial software, the contracting office can incorporate into the purchase agreement the provisions of "Commercial Computer Software - Restricted Rights," Federal Acquisition Regulation Part 52.227-19. This clause is the generic software rights protection for the government. Additionally, the contracting officer may, with the help of the ordering agency, craft specific terms and conditions for the use of the software to avoid problems after contract award, such as the ownership and disposition of superseded copies of software and documentation. In summary, the agency's purchase order or contract helps define the government's rights, which may have precedence over the vendor's standard commercial license agreement.

Disposition/reuse actions for software must comply with the terms and conditions of the license. When there is a question concerning the license agreement in relation to a disposition action, the organization initiating the specific action (IRM office or PPMO) should refer the matter to the appropriate contracting office for clarification. The license agreement is part of the purchasing agreement or contract with the vendor. Only contracting officers or general counsel representatives should make binding interpretations or changes, in consultation with the vendor or manufacturer.<sup>1</sup>

**Software Protection by Copyright.** Copyrights are Federal laws sanctioned under the Constitution. Most commercially available software, whether purchased off-the-shelf or under a complex procurement contract, are covered by a combination of copyright and trade secret protection. The copyright owner has exclusive control over the use of the work (underlying program code), its reproduction, distribution, display, performance, and the creation of derivative works. The copyright owner also controls the translation rights. Copyright infringers can be held **liable** for violating the copyright. When an agency procures a commercial software package, it usually purchases only the right, or license, to

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<sup>1</sup>Some software manufacturers allow customers who purchase upgrades of software to donate previous versions to schools and non-profit organizations. The recipients will not receive upgrades or license transfer.

use the package. Commercial software, however, can often be easily copied and shared, in violation of licensing agreements. As a result, HHS OPDIVs must establish appropriate controls to prevent such unauthorized use.

In general, you can tell that a program is copyrighted when the traditional copyright notice appears on your computer screen.

## **2.6 Removing Sensitive Data**

Prior to reuse or disposition, all sensitive HHS data must be removed from the PC software and component equipment (e.g., overwriting and/or degaussing hard disk drives). This action is the responsibility of the using organization with help from the organization's IRM office and information systems security officer. Also the Logistics Management Manual (LMM), 103-43.100-50.004, Disposal Processing, requires "that all magnetic tapes and disk storage packs shall be degaussed and certified on the HHS-22 or TID.

## **2.7 Responsibilities**

HHS (PPMOs) have responsibility for disposal and reuse of all personal property within HHS.

In coordination with the PPMOs, the HHS IRM organizations and officials have responsibility for screening for reuse or disposal of Federal Information Processing (FIP) equipment and related supplies.

## **2.8 Information and Assistance**

For further information on this subject, we have provided three Appendices:

**Appendix A** - provides references to Federal property regulations and other sources

**Appendix B** - defines the various terms associated with this subject.

Any OPDIV experiencing difficulties interpreting or implementing this guidance should contact the Office of Information and Resources Management or the Office of Grants and Acquisition Management for assistance. Information and assistance may be obtained by contacting the Division of Policy and Evaluation, OS/OIRM at (202) 690-5515 or the Logistics Policy Staff, OS/OGAM at (202) 690-5663/7569.

## APPENDIX A: REFERENCES

1. Federal Property Management Regulations (FPMR), Subchapter H, "Utilization and Disposal."

2. HHS Logistics Management Manual

**Section 103-27**, "Accountability and Property Records," provides the requirements for accountability and property records for effective acquisition, management during use, reconciliation with financial records, and disposal of personal property.

**Section 103-43**, "Utilization and Disposal," addresses the disposition of FIP equipment and supplies that have an acquisition cost of \$1,500 or less. Instructions pertaining to items exceeding \$1,500 "are contained in FPMR at 101-36.303.

**Other Relevant Sections:** Part 103-44, "Donation of Personal Property;" Part 103-45, "Sale, Abandonment, or Destruction of Personal Property;" and Part 103-46, "Utilization and Disposal of Personal Property Pursuant to Exchange/Sale Authority."

3. DHHS Automated Information Systems Security Program (AISSP) Handbook sets forth requirements for externally-developed software:

"PC software products may not be copied except to the limit provided by contract (e.g., including an archived copy for backup purposes). Employees or contractors who make additional copies to avoid the cost of acquiring one lawfully must be held accountable for their actions...

Applications managers purchasing software packages protected by quantity licenses must ensure a tracking system is in place to control the copying and distribution of proprietary software."

4. GSA "Guide for Acquiring Commercial Software", January 1991
5. GSA "Personal Property Utilization and Disposal Guide", March 1990

## APPENDIX B: DEFINITIONS

1. **"Acquire"** means to procure, purchase, or obtain in any manner, including transfer and manufacture or production at Government-owned or operated plants and facilities.
2. **"Excess"** means personal property under the control of a Federal agency and which is not required by the owning agency for its needs and discharge of its responsibilities.
3. **"Excess FIP equipment"** means FIP equipment controlled by a Federal agency but no longer required for its needs.
4. **"Exchange"** means to replace a non-excess personal property item by trade or trade-in with the supplier of the replacement item when the value of the replaced item is used to reduce or offset the cost of the acquired item. The supplier may be a Government agency, commercial or private organization, or an individual.
5. **"FIP equipment"** means any Federal information processing equipment or interconnected system or subsystems of equipment used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information.
6. **"FIP resources"** includes FIP equipment, software, services, support services, maintenance, related supplies, and systems.
7. **"FIP software"** means any software, including firmware, specifically designed to make use of and extend the capabilities of FIP equipment.
8. **"Outdated FIP equipment"** means any FIP equipment over eight years old, based on the initial commercial installation date of that model of equipment, and that is no longer in current production.
9. **"Reassignment"** means the transfer of other-than-excess FIP equipment or the transfer of FIP software, within an agency.
10. **"Replacement"** means and is limited to the process of acquiring property specifically to be used in place of property which is still needed but will no longer adequately perform all the tasks for which it was used.
11. **"Screening"** means the evaluation of FIP equipment which is available for reassignment to determine if its use is the most advantageous alternative to satisfy requirements.
12. **"Surplus FIP equipment"** means any excess Government-owned FIP equipment not required for the needs of Federal agencies as determined by the Administrator of the General Services Administration.